

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

November 30, 2001

GSBCA 15514-RELO

In the Matter of WILLIAM D. PHILLIPS

William D. Phillips, Layton, UT, Claimant.

Dora R. Tunches, Chief, Civilian Transition and Training, Headquarters San Antonio Air Logistics Center, Kelly Air Force Base, TX, appearing for Department of the Air Force.

WILLIAMS, Board Judge.

Claimant, William D. Phillips, an aerospace engineer with the Department of the Air Force, seeks \$14,854.62 in real estate transaction expenses he incurred when he sold his home in connection with his transfer. The agency correctly denied the claim because claimant sold a home which was not the residence from which he regularly commuted to his old duty station.

Background

On April 12, 1999, claimant entered civil service as an intern at Kelly Air Force Base (AFB), Texas, with the understanding that this base would close and his office's function would be transferred to Hill AFB, Utah, by the summer of 2000. Due to his upcoming transfer, claimant maintained his home in Keller, Texas, some 282 miles from Kelly AFB, and secured temporary quarters during the work week at Kelly AFB. Claimant traveled to his residence in Keller, Texas, almost every weekend (some fifty-one times) during his tenure at Kelly AFB, and claimant's wife and daughter remained at the Keller residence during this time to avoid disrupting his daughter's senior year at Keller High School. Claimant maintained his voter's registration, driver's license, and health insurance at the Keller, Texas, address.

In January 2000, claimant was formally notified that he was to report to Hill AFB on July 17, 2000. Claimant sold his Keller, Texas, home on May 31, 2000, and reported for duty at Hill AFB as scheduled in July 2000.

Discussion

Under the Federal Travel Regulation (FTR), an employee is entitled to reimbursement of allowable expenses for the sale of one residence at the employee's old duty station. 41 CFR 302-6.1 (1999). Residence means the "residence or other quarters from which the employee regularly commutes from work." 41 CFR 302-1.4(k), 6.1(b). The definition in the Joint Travel Regulations (JTR) is substantively the same. JTR C14000-A. A commute is regular when it is daily. David Morell, GSBICA 15229-RELO, 00-1 BCA ¶ 30,899. As such, claimant's weekend trips to Keller, Texas, did not satisfy the requirement that he "regularly commute" from that residence in order to be reimbursed for real estate expenses. Claimant argues that the Keller house was actually his residence since claimant's family was in Keller, his permanent, legal residence was in Keller, he voted in Keller, he obtained his driver's license and health insurance there, and he returned there every weekend. Those facts do not establish the house as a "residence" for reimbursement purposes under the FTR or JTR. Rather, the abode must be the one from which the employee regularly commuted to and from work on a regular, i.e., daily basis. Paul Henderson, GSBICA 15480-RELO, 01-2 BCA ¶ 31,501; Morell, 00-1 BCA at 152,472; Michael L. Martin, GSBICA 13821-RELO, 97-2 BCA ¶ 29,142; John K. Bowman, B-247125 (June 12, 1991).

The Board has consistently decided that an employee who commutes to work from living quarters close to his duty station on a daily basis and returns only on weekends and holidays to a residence where his family lives does not regularly commute from that residence. Mitchell J. Schutz, GSBICA 15521-RELO, 01-2 BCA ¶ 31,461; Morell, 00-1 BCA at 152,472; Ezzat Asaad, M.D., GSBICA 14484-RELO, 98-1 BCA ¶ 29,667; David M. Whetsell, GSBICA 14089-RELO, 98-1 BCA ¶ 29,610; Malcolm L. Jowers, GSBICA 13727-RELO, 97-1 BCA ¶ 28,800. Because Mr. Phillips did not regularly commute to work from the house in Keller, he is not eligible to be reimbursed for the expenses he incurred in selling that house.

Nor would claimant have been entitled to real estate expenses when he entered Government service. Statute and regulation provide only limited relocation benefits to new appointees; those limited benefits do not include reimbursement of real estate transaction expenses. 5 U.S.C. § 5723 (Supp. V 1999); 41 CFR 302-1.10(f); JTR C4051-F; Schutz, 01-2 BCA at 155,332; Charles G. Bakaly, III, GSBICA 14750, 99-1 BCA ¶ 30,249, reconsideration denied, 99-1 BCA ¶ 30,367; William Archilla, GSBICA 13878-RELO, 97-1 BCA ¶ 28,799.

Decision

The claim is denied.

MARY ELLEN COSTER WILLIAMS
Board Judge